United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

77 - 7156

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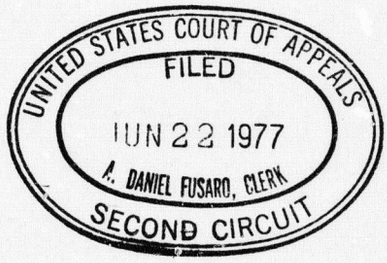
UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

P/S

DOCKET NUMBER 77-7156



BISWANATH HALDER

v

INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION

and Appendix

BRIEF FOR PLAINTIFF-APPELLANT

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NUMBER 77-7156

BISWANATH HALDER,

PLAINTIFF-APPELLANT,

V

INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION,

DEFENDANT-APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR PLAINTIFF-APPELLANT

BISWANATH HALDER

APPELLANT PRO SE

173-17 65TH AVENUE

FLUSHING, NEW YORK 11365

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37. UNITED STATES V THIND, 1923, 261 U.S. 204, 43 S.Ct. 338, 67 L.Ed. 616. 11

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ISSUES PRESENTED

1. WHETHER LEAVE TO AMEND A PLEADING IS FREELY GIVEN WHEN JUSTICE SO REQUIRES.

2. WHETHER OPEN DISCLOSURE OF ALL POTENTIALLY RELEVANT INFORMATION IS FUNDAMENTAL IN THE ADVERSARY SYSTEM OF JUSTICE.

FACTS

THE PLAINTIFF-APPELLANT WAS BORN IN INDIA, OF INDIAN PARENTAGE. HE HOLDS A BACHELOR'S DEGREE IN ELECTRICAL ENGINEERING FROM THE UNIVERSITY OF CALCUTTA. HE IMMIGRATED TO THIS GREAT COUNTRY IN MAY 1969.

PRIOR TO COMING TO THE UNITED STATES, THE PLAINTIFF HAD GAINED TWO YEARS OF EXPERIENCE IN COMPUTER SOFTWARE WITH TWO REPUTABLE COMPUTER MANUFACTURERS IN ENGLAND. HE WAS ADMITTED TO THIS COUNTRY AS AN ALIEN WHO IS A MEMBER OF A PROFESSION FOR WHICH THERE IS AN AVAILABLE MARKET FOR HIS PROFESSIONAL SERVICES. 8 USCA 1153(a)(3).

EVER SINCE THE PLAINTIFF ARRIVED IN THE LAND OF OPPORTUNITY, HE HAS BEEN LOOKING FOR A JOB.

THE PLAINTIFF, IN OCTOBER 1976,

COMMENCED INSTANT ACTION AGAINST THE DEFENDANT, INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION (ITT), BY FILING A COMPLAINT AT THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

IN THE COMPLAINT THE PLAINTIFF CHARGED THAT THE DEFENDANT DENIED HIM EQUAL EMPLOYMENT OPPORTUNITIES AS PROVIDED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED BY THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972, 42 USCA 2000e et seq., BASED ON ITS FAILURE OR REFUSAL TO EMPLOY HIM AS A PROGRAMMER-ANALYST BECAUSE OF HIS NATIONAL ORIGIN.

AROUND THE SAME TIME THE PLAINTIFF COMMENCED SIX OTHER ACTIONS AGAINST COMPANIES MAKING SUBSTANTIALLY THE SAME ALLEGATIONS ASSERTED AGAINST THE DEFENDANT.

SINCE APRIL 1975 THE DISTRICT COURT, IN ACTIVE CONCERT AND CO-OPERATION WITH THE MULTI-NATIONAL AND MULTI-BILLION DOLLAR

CORPORATE DEFENDANTS, HAS BEEN, IN EVERY POSSIBLE AND EVEN IN SOME IMPOSSIBLE WAYS, TRYING TO ANNIHILATE* THE POOR AND HELPLESS PLAINTIFF.

* "FEDERAL COURTS HAVE BEEN ASSIGNED PLENARY POWERS [TO ANNIHILATE THOSE WHO TRY] TO SECURE COMPLIANCE WITH TITLE VII." ALEXANDER V GARDNER-DENVER COMPANY, 1974, 415 U.S. 36, 45, 94 S. Ct. 1011, 1018.

ARGUMENT

THE APPELLANT HAS BEEN SEEKING EMPLOYMENT WITH THE APPELLEE AS A PROGRAMMER-ANALYST EVER SINCE HE IMMIGRATED TO THE UNITED STATES (DS,** PARA 5). AND ALTHOUGH HIS BACKGROUND — TRAINING IN ELECTRICAL ENGINEERING AND EXPERIENCE IN ASSEMBLY LANGUAGE PROGRAMMING — PERFECTLY MATCHED A GREAT MANY OF THE APPELLEE'S JOB REQUIREMENTS OVER THE LAST EIGHT YEARS, HE HAS NEVER BEEN OFFERED A JOB. THE APPELLEE CONTENDS HOWEVER, THAT THE PROGRAMMERS AND ANALYSTS HIRED DURING THIS PERIOD POSSESSED QUALIFICATIONS SUPERIOR TO THOSE OF THE APPELLANT. IN THESE CIRCUMSTANCES IT IS IMPERATIVE THAT THE APPELLANT BE GIVEN A FULL AND FAIR OPPORTUNITY TO AVAIL OF HIS GUARANTEED RIGHT IN A COURT OF LAW, NOT ONLY TO REDRESS HIS OWN INJURIES, BUT ALSO TO VINDICATE "A POLICY THAT CONGRESS

CONSIDERED OF THE HIGHEST PRIORITY." NEWMAN V PIGGIE PARK ENTERPRISES, 1968, 390 U.S. 400, 402, 88 S. Ct. 964, 966.

** REFERENCE TO THE RECORD WILL BE MADE BY DOCUMENT NUMBER ON THE DOCKET SHEET, AND BY PAGE: "D , P ."

POINT I LEAVE TO AMEND A PLEADING IS FREELY GIVEN WHEN JUSTICE SO REQUIRES

THE APPELLANT IS AN ENGINEER, AND A LAYMAN IN MATTERS OF LAW. THE SUPREME COURT HAS LONG RECOGNIZED THAT "EVEN THE INTELLIGENT AND EDUCATED LAYMAN HAS SMALL AND SOMETIMES NO SKILL IN THE SCIENCE OF LAW." POWELL V ALABAMA, 1932, 287 U.S. 45, 69, 53 S.Ct. 55, 64.

THE APPELLANT'S ASSUMPTION WAS THAT THE ORIGINAL CHARGE OF DISCRIMINATION ON THE BASIS OF NATIONAL ORIGIN DID IN FACT TAKE INTO ACCOUNT HIS BEING NON-WHITE (COLOR), NON-CHRISTIAN (RELIGION), AND A NON-CITIZEN (ALIENAGE). WHEN THE APPELLANT REALIZED THE DEFICIENCY IN HIS COMPLAINT, HE MOVED TO AMEND THE COMPLAINT, PURSUANT TO RULE 15 OF THE FEDERAL RULES OF CIVIL PROCEDURE, TO INCLUDE A CAUSE OF ACTION UNDER THE CIVIL

RIGHTS ACT OF 1866, AS AMENDED BY THE ENFORCEMENT ACT OF 1870, 42 USCA 1981, AS WELL AS TO JOIN THE SUBSIDIARY COMPANIES WHERE THE APPELLANT SOUGHT EMPLOYMENT AS PARTY-DEFENDANTS, AND ALSO TO ADD ADDITIONAL GROUNDS OF DISCRIMINATION (D 20):

RULE 15(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE PROVIDES, IN PERTINENT PART, THAT "A PARTY MAY AMEND HIS PLEADING ONLY BY LEAVE OF COURT . . . ; AND LEAVE SHALL BE FREELY GIVEN WHEN JUSTICE SO REQUIRES."

THE APPLICABLE STANDARD FOR DETERMINING WHETHER TO GRANT LEAVE FOR THE FILING OF AN AMENDED COMPLAINT HAS BEEN STATED BY THE SUPREME COURT:

"THE APPLICABLE RULE IS RULE IS OF THE FEDERAL RULES OF CIVIL PROCEDURE, WHICH WAS DESIGNED TO FACILITATE THE AMENDMENT OF PLEADINGS EXCEPT WHERE PREJUDICE TO THE OPPOSING PARTY WOULD RESULT." UNITED STATES

V HOUGHAM, 1960, 364 U.S. 310, 316, 81 S.Ct. 13, 18.

ACCORD, ZENITH RADIO CORPORATION V HAZELTINE RESEARCH, INC., 1971, 401 U.S. 321, 330-1, 91 S.Ct. 795, 802.

THE SUPREME COURT ELABORATED ON THIS STANDARD IN FOMAN V DAVIS, 1962, 371 U.S. 178, 182, 83 S.Ct. 227, 230:

"IN THE ABSENCE OF ANY APPARENT OR DECLARED REASON — SUCH AS UNDUE DELAY, BAD FAITH, OR DILATORY MOTIVE ON THE PART OF THE MOVANT REPEATED FAILURE TO CURE DEFICIENCIES BY AMENDMENTS PREVIOUSLY ALLOWED, UNDUE PREJUDICE TO THE OPPOSING PARTY BY VIRTUE OF THE ALLOWANCE OF THE AMENDMENT, FUTILITY OF AMENDMENT, ETC. — THE LEAVE SOUGHT SHOULD, AS THE RULES REQUIRE, BE 'FREELY GIVEN.'"

NONE OF THE FACTORS MILITATING AGAINST GRANTING LEAVE TO AMEND AS STATED ABOVE ARE PRESENT IN THE INSTANT ACTION.

FURTHERMORE, THE APPELLANT RESPECTFULLY POINTS OUT THAT THE "LEGISLATIVE ENACTMENTS

IN [THE AREA OF EMPLOYMENT DISCRIMINATION] HAVE LONG EVINCED A GENERAL INTENT TO ACCORD PARALLEL OR OVERLAPPING REMEDIES AGAINST DISCRIMINATION," ALEXANDER V GARDNER-DENVER COMPANY, 1974 415 U.S. 36,47, 94 S.Ct. 1011, 1019, AND THAT "THE FILING OF A TITLE VII CHARGE AND RESORT TO TITLE VII'S ADMINISTRATIVE MACHINERY ARE NOT PREREQUISITES FOR THE INSTITUTION OF A SECTION 1981 ACTION." JOHNSON V RAILWAY EXPRESS AGENCY, 1975, 421 U.S. 454, 460, 95 S.Ct. 1716. 1720.

INSPITE OF THAT THE TRIAL COURT DENIED LEAVE TO THE APPELLANT TO AMEND THE COMPLAINT TO INCLUDE A CAUSE OF ACTION UNDER SECTION 1981, AND TO JOIN THE SUBSIDIARY COMPANIES AS ADDITIONAL DEFENDANTS (D 25), ALTHOUGH THE APPELLANT — WHO IS NEITHER WHITE NOR A CITIZEN OF THE UNITED STATES, BUT A RESIDENT ALIEN WHO FALLS WITHIN THE JURISDICTION OF THE UNITED STATES — HAS THE SAME RIGHT TO MAKE AND ENFORCE EMPLOYMENT CONTRACTS AS IS

ENJOYED BY WHITE CITIZENS. MCDONALD V SANTA FE TRAIL TRANSPORTATION COMPANY, 1976, 427 U.S. 273, 285-96, 96 S.CT. 2574, 2580-6; TAKAHASHI V FISH & GAME COMMISSION, 1968, 334 U.S. 410, 419, 68 S.CT. 1138, 1142-3; UNITED STATES V THIND, 1923, 261 U.S. 204, 209, 43 S.CT. 338, 340.

"IT IS SETTLED THAT THE GRANT OF LEAVE TO AMEND THE PLEADINGS PURSUANT TO RULE 15(a) IS WITHIN THE DISCRETION OF THE TRIAL COURT." ZENITH RADIO CORPORATION V HAZELTINE RESEARCH, INC., 1971, 401 U.S. 321, 330, 91 S.CT. 795, 802. ACCORD FOMAN V DAVIS, 1962, 371 U.S. 178, 182, 83 S.CT. 227, 230; THOMSEN V CAYSER, 1917, 243 U.S. 66, 89, 37 S.CT. 353, 360; TILTON V COFIELD, 1876, 93 U.S. (3 OTTO) 163, 166.

BUT SUCH A DISCRETIONARY CHOICE IS NOT LEFT TO A COURT'S "INCLINATION, BUT TO ITS JUDGMENT; AND ITS JUDGMENT IS TO BE GUIDED BY SOUND LEGAL PRINCIPLES." UNITED STATES V BURR, 1807, 25 FEDERAL CASES NO. 14,692D, DD 30,

35 (MARSHALL, C.J.).

"OUTRIGHT REFUSAL TO GRANT THE LEAVE [TO AMEND THE COMPLAINT] WITHOUT ANY JUSTIFYING REASON APPEARING FOR THE DENIAL IS NOT AN EXERCISE OF DISCRETION; IT IS MERELY ABUSE OF THAT DISCRETION AND INCONSISTENT WITH THE SPIRIT OF THE FEDERAL RULES." FOMAN V DAVIS, 1962, 371 U.S. 178, 182, 83 S.Ct. 227, 230.

THE APPELLANT PRAYS THAT THE COURT BE MINDFUL OF THE PURPOSE OF PLEADINGS WHICH IS "TO FACILITATE A PROPER DECISION ON THE MERITS", CONLEY V GIBSON, 1957, 355 U.S. 41, 48. 78 S.Ct. 99, 103, AND NOT TO ERECT FORMAL AND BURDENSOME IMPEDIMENTS IN THE LITIGATION PROCESS.

SINCE IT IS TRANSPARENT THAT THE COURT BELOW DEFEATED THE ENDS OF JUSTICE IN DENYING LEAVE TO THE APPELLANT TO AMEND THE COMPLAINT TO JOIN THE SUBSIDIARY COMPANIES AS PARTY-DEFENDANTS. THE SAID DECISION SHOULD BE REVERSED.

POINT II

OPEN DISCLOSURE OF ALL POTENTIALLY RELEVANT INFORMATION IN THE ADVERSARY SYSTEM OF JUSTICE IS BOTH FUNDAMENTAL AND COMPREHENSIVE

CONGRESS ENACTED TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 "TO ACHIEVE EQUALITY OF EMPLOYMENT OPPORTUNITIES AND REMOVE BARRIERS THAT HAVE OPERATED IN THE PAST TO FAVOR AN IDENTIFIABLE GROUP OF WHITE [APPLICANTS] OVER OTHER [APPLICANTS FOR EMPLOYMENT]". GRIGGS V DUKE POWER COMPANY, 1971, 401 U.S. 424, 429-30, 91 S.Ct. 849, 853.

HOWEVER, "THE ACT DOES NOT COMMAND THAT ANY PERSON BE HIRED SIMPLY BECAUSE HE . . . IS A MEMBER OF A MINORITY GROUP." ID., 401 U.S. at 430-1, 91 S.Ct. at 853.

"INDEED, THE VERY PURPOSE OF TITLE VII IS TO PROMOTE HIRING ON THE BASIS OF JOB QUALIFICATIONS, RATHER THAN ON THE BASIS OF

[COLOR, OR RELIGION, OR NATIONAL ORIGIN]." 110 CONG REC. 7247.

THE INTERROGATORIES PROPOUNDED BY THE APPELLANT PRIMARILY CALL FOR THE QUALIFICATIONS OF THE PROGRAMMERS AND ANALYSTS HIRED BY THE APPELLEE SINCE 1969 (D 8). YET THE APPELLEE OBJECTED TO THOSE INTERROGATORIES ON GROUNDS OF BURDENSOMENESS AND IRRELEVANCE (D 26). AND THE TRIAL COURT SUSTAINED THOSE OBJECTIONS (D 30

IT IS WELL RECOGNIZED THAT A LAWSUIT IS NOT A CONTEST IN CONCEALMENT, AND THAT THE DISCOVERY PROCESS WAS ESTABLISHED SO THAT "EITHER PARTY MAY COMPEL THE OTHER TO DISGORG WHATEVER FACTS HE HAS IN HIS POSSESSION." HICKMAN V TAYLOR, 1947, 329 U.S. 495, 507, 67 S.Ct. 385, 39

THE BROAD SCOPE OF DISCOVERY, AS ARTICULATED IN THE TEXT, IS ALSO REFLECTED IN AN OPINION BY JUDGE LEAHY SHORTLY AFTER THE ADOPTION OF THE FEDERAL RULES OF CIVIL PROCEDURE :

"UNLESS IT IS PALPABLE THAT THE EVIDENCE SOUGHT CAN HAVE NO POSSIBLE BEARING UPON THE ISSUES, THE SPIRIT OF THE NEW RULES CALLS FOR EVERY RELEVANT FACT, HOWEVER REMOTE, TO BE BROUGHT OUT FOR THE INSPECTION NOT ONLY OF THE OPPOSING PARTY BUT FOR THE BENEFIT OF THE COURT WHICH IN DUE COURSE CAN ELIMINATE THOSE FACTS WHICH ARE NOT TO BE CONSIDERED IN DETERMINING THE ULTIMATE ISSUES." HERCULES POWDER COMPANY V ROHM & HAAS COMPANY, 3 F.R.D. 302, 304, DC DE 1943.

MOREOVER, THE SUPREME COURT MADE IT CLEAR THAT THE "DISCOVERY RULES ARE TO BE ACCORDED A BROAD AND LIBERAL TREATMENT"; AND THAT "MUTUAL KNOWLEDGE OF ALL THE RELEVANT FACTS GATHERED BY BOTH PARTIES IS ESSENTIAL TO PROPER LITIGATION." HICKMAN V TAYLOR, supra, 329 U.S. at 507, 67 S.Ct. at 392.

BESIDES, "CIVIL TRIALS IN THE FEDERAL

COURTS NO LONGER NEED BE CARRIED ON IN THE DARK." Id., 329 U.S. at 501, 67 S.Ct. at 389. THEREFORE, THE SUPREME COURT MANDATED THAT "ON . . . [TRIAL] [THE APPELLANT] MUST BE GIVEN A FULL AND FAIR OPPORTUNITY TO DEMONSTRATE BY COMPETENT EVIDENCE THAT THE PRESUMPTIVELY VALID REASONS FOR HIS REJECTION WERE IN FACT [PRETEXTUAL OR] A COVERUP FOR A . . . DISCRIMINATORY DECISION." MCDONNELL DOUGLAS CORPORATION V GREEN, 1973, 411 U.S. 792, 805, 93 S.Ct. 1817, 1826.

THE SUPREME COURT HAS ALSO GIVEN CLEAR GUIDELINES ON THE COMPETENT EVIDENCE RELEVANT TO A JOB-BIAS COMPLAINANT TO ANY SHOWING OF PRETEXTUALITY :

> "STATISTICS AS TO [THE EMPLOYER'S] EMPLOYMENT POLICY AND PRACTICE MAY BE HELPFUL TO A DETERMINATION OF WHETHER [THE EMPLOYER'S] REFUSAL TO [HIRE] [THE APPLICANT] . . . CONFORMED TO A GENERAL PATTERN OF

DISCRIMINATION AGAINST [MINORITIES]". Id., 411 U.S. at 805, 93 S.Ct. at 1825.

THE INFORMATION SOUGHT BY THE APPELLANT THROUGH INTERROGATORIES CALLS FOR STATISTICS AS TO THE APPELLEE'S EMPLOYMENT POLICY AND PRACTICE. FAR FROM BEING BURDENSOME OR IRRELEVANT, THE INTERROGATORIES ARE ENTIRELY "RELEVANT TO THE SUBJECT MATTER INVOLVED IN THE PENDING ACTION," AND THAT "THE INFORMATION SOUGHT APPEARS REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE.". RULE 26(b)(1), FEDERAL RULES OF CIVIL PROCEDURE. SEE ALSO TABATCHNICK V. G.D. SEARLE & COMPANY, 67 F.R.D. 49.54, DC NJ 1975; UNITED STATES V INTERNATIONAL BUSINESS MACHINES CORPORATION, 66 F.R.D. 215, 218, SD NY 1974; SAYRE V ABRAHAM LINCOLN FEDERAL SAVINGS & LOAN ASSOCIATION, 65 F.R.D. 379, 382, ED PA 1974; ROTO-FINISH COMPANY V ULTRAMATIC EQUIPMENT COMPANY, 60 F.R.D. 571, 572, ND IL 1973; FRANKS

V NATIONAL DAIRY PRODUCTS CORPORATION, 41 F.R.D. 234, 238, ED TX 1966; UNITED STATES V A.B. DICK COMPANY, 7 F.R.D. 462, 463, ND OH 1947; KAPLAN V INTERNATIONAL ALLIANCE OF THEATRICAL AND STAGE EMPLOYEES, 525 F.2D 1354, 1358, CA 9 1975; RODRIGUEZ V EAST TEXAS MOTOR FREIGHT, 505 F.2D 40, 53, CA 5 1974; JONES V LEE WAY MOTOR FREIGHT, 431 F.2D 245, 249, CA 10 1970; UNITED STATES V PROCTER & GAMBLE COMPANY, 1958, 356 U.S. 677, 682-3, 78 S.Ct. 983, 986-7.

THE COURT SHOULD BEAR IN MIND THAT "THE NEED TO DEVELOP ALL RELEVANT FACTS IN THE ADVERSARY SYSTEM IS BOTH FUNDAMENTAL AND COMPREHENSIVE." UNITED STATES V NIXON, 1974, 418 U.S. 683, 709, 94 S.Ct. 3090, 3108.

IN ADDITION, "THE EXPERIENCE OF THE FEDERAL COURTS OVER THE LAST TWO DECADES HAS BEEN THAT ... DISCRIMINATION IN EMPLOYMENT ... IS OFTEN SUBTLE AND NOT EASILY PROVED. THE CONSEQUENCES OF SUCH

DISCRIMINATION ARE MOST GRAVE, BOTH FOR THE INDIVIDUAL VICTIM AND FOR SOCIETY AT LARGE." BOOTH V PRINCE GEORGE'S COUNTY, MARYLAND, 66 F.R.D. 466, 473, DC MD 1975.

THEREFORE, THE NECESSITY FOR LIBERAL DISCOVERY TO CLARIFY THE COMPLEX ISSUES ENCOUNTERED IN LITIGATION SEEKING TO REDRESS EMPLOYMENT DISCRIMINATION HAS BEEN WIDELY RECOGNIZED. BURNS V THIOKOL CHEMICAL CORPORATION, 483 F.2d 300, CA 5 1973.

IT IS A WELL-ESTABLISHED DOCTRINE THAT THE SCOPE AND CONDUCT OF DISCOVERY ARE WITHIN THE SOUND DISCRETION OF THE TRIAL JUDGE. BAKER V F & F INVESTMENT, 470 F.2d 778, 781, CA 2 1972, CERT. DEN. 1973, 411 U.S. 966, 93 S.Ct. 2147; MONTECATINI EDISON S.P.A. V E.I. DU PONT DE NEMOURS & COMPANY, 434 F.2d 70, 72, CA 3 1970; SOUTHERN RAILWAY COMPANY V LANHAM, 403 F.2d 119, 126, CA 5 1968; TIEDMAN V AMERICAN PIGMENT CORPORATION,

253 F.2d 803, 808, CA 4 1958; BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION V HAYDEN, 231 F.2d 595, 606, CA 9 1956; SHER V DE HAVEN, 199 F.2d 777, 781, CA DC 1952; ATLANTIC GREYHOUND CORPORATION V LAURITZEN, 182 F.2d 540, 542, CA 6 1950.

"BUT THE JUDGE'S DISCOVERY RULINGS, LIKE HIS OTHER PROCEDURAL DETERMINATIONS, ARE NOT ENTIRELY SACROSANCT. IF HE FAILS TO ADHERE TO THE LIBERAL SPIRIT OF THE RULES, [THE APPELLATE COURT] MUST REVERSE." BURNS V THIOKOL CHEMICAL CORPORATION, supra, 483 F.2d at 305.

THE APPELLANT PRAYS THAT THE COURT BE MINDFUL THAT "THE VERY INTEGRITY OF THE JUDICIAL SYSTEM AND PUBLIC CONFIDENCE IN THE SYSTEM DEPEND ON FULL DISCLOSURE OF ALL THE FACTS, WITHIN THE FRAMEWORK OF THE RULES OF EVIDENCE." UNITED STATES V NIXON, supra, 418 U.S. at 709, 94 S.Ct. at 3108.

SINCE IT IS TRANSPARENT THAT THE COURT BELOW DEFEATED THE ENDS OF JUSTICE IN DENYING DISCOVERY TO THE APPELLANT, THE SAID DECISION SHOULD BE REVERSED.

CONCLUSION

THE JUDGMENT APPEALED FROM SHOULD, IN ITS ENTIRETY, BE REVERSED.

RESPECTFULLY SUBMITTED,

Biswanath Halder

Biswanath Halder
Appellant Pro Se

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DATED : Queens, New York
June 9, 1977

74C 1532 DOCKET

APPEAL

MISHLER, J.

TITLE OF CASE

BISWANATH HALDER

VS.

ITT CORPORATION

ATTORNEYS

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NYC 10017 / 678-7210

BASIS OF ACTION: CIVIL RIGHTS

RELATED CASES: 74C 1069
1375
1376
1377
1531

JURY TRIAL CLAIMED
ON

DATE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED
10-29-74	Complaint	NO FEE	

DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED

ABSTRACT OF COSTS

TO WHOM DUE	AMOUNT

RECEIPTS, REMARKS, ETC.

74Q 1538 HALDER v. ITT CORPORATION

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
10-29-74	By MISHLER, CH. J.-Order dated 10-29-74 that pltff may prosecute said proceeding to conclusion without prepayment of fees or cost. filed.	1	
10-29-74	Complaint filed. Summons issued.	2	JS5
11/18/74	Summons retd and filed Executed	3	
11-29-74	ANSWER FILED.	4	
1-3-75	Notice of Motion ret 1-17-75 for an order granting the pltff leave to amend his complaint filed.	5	
1/17/75	Before MISHLER CH.J.- Case called0 Deft's motion to amend complaint submitted-Decision reserved.		
1/21/75	Notice to produce documents under Rule 34 filed.	6	
1-30-75	Affidavit of Service by mail filed.	7	
1-30-75	Interrogatories filed.	8	
2-24-75	By MISHLER, CH. J.-Memorandum of Decision and Order dtd 2-24-75 granting leave to amend the complaint filed. (p/c)	9	
3-31-75	Pltff's request to enter default filed.	10	
3-25-75	Notice of motion ret 5-2-75 for an order compelling defts to answer interrogatories filed.	11	
5-01-75	ANSWER filed.	12	
5-01-75	Affidavit in opposition and Memorandum of Law filed.	13/14	
5-2-75	Before MISHLER, CH. J - Case called for hearing on pltff's motion to compel deft to answer interrogatories. Motion		
5-3-75	Memorandum of law and affidavit of Michael R. Treanor in opposition to motion to compel answers to interrogatories filed.	15/16	
5-15-75	Notice of motion ret 6-6-75 for judgment on the pleadings & memorandum of law in support of motion filed.	17/18	
5-27-75	Complaint and motion for other relief filed.	19	
5-27-75	Notice of cross-motion for an order pursuant to Rule 15(a) filed.	20	
6-5-75	Statement under general rule 9 filed.	21	
6-5-75	Affidavit of Michael R. Treanor filed.	22	
6-5-75	Memorandum of Law filed.	23	
6-6-75	Before MISHLER, CH. J. - Case called for hearing on judgment on the pleadings. Motion submitted.		
2-9-76	Copy of letter dtd 2-5-76 from Ch.J. Mishler filed re setting date for trial: Feb 10, 1976 at 10 A.M.	24 cy	
		rontfl.	

CIVIL 74-C-1532 HALDER vs ITT CORP.,
CRIMINAL DOCKET

DATE	PROCEEDINGS
2-10-76	Before MISHLER,J.- Case called. Adj without date for trial
- -	pending completion of discovery
2-11-76	By MISHLER,J.- Order denying all of plaintiff motions except
	pltff. motion to compel answers to interr. Deft. is directed
	to serve and file answers,filed. See Order. 25
5-11-76	Sten. transcript dtd. 2-10-76 filed in 74-C-1069 ---
1/3/77	Answers to interrogatories filed 26
1-12-77	Motion to compel deft to answer interrogatories ret 1-28-77
	filed. 27
1-12-77	Supplememtal interrogatories filed.to deft. 28
1/20/77	Affidavit of Michael R. Treanor filed re in opposition to the motion
	by pltff to compel answers to interrogatories. 29
1-28-77	Before MISHLER, CH. J. - Case called. Motion to compel deft to
	answer interrogatories submitted. Decision reserved.
2-28-77	By MISHLER, CJ.-Memo of decision & Order dtd 2-28-77 dneying
	motion to compel answers to interrogatories filed. (30)
3/2/77	Deft's answer to interrogatories filed. (31)
3/3/77	Before Mishler, Ch. J--case called-pltff not ready for trial-deft
	ready for trial-trial ordered & begun-trial concluded-the court found
	for the deft and against the pltff-clerk to enter judgement in favor
	of the deft and against the pltff dismissing the complaint-together with
	costs when taxed-.
3/4/77	CLERKS judgment entered. Pltff take nothing of the def. and that the [illegible] (32)
4-1-77	PLTFF'S NOTICE OF APPEAL FILED. Copy of notice mailed to deft atty & C of A. (33)
4-1-77	Pltff's motion for an order that gov't pay for transcripts, etc. filed. (34)
4-13-77	Civil appeal scheduling order filed. (Record to be filed 6-20-77) (35)
4-15-77	By MISHLER, CH.J Memo of decision & Order dtd 4-14-77 denying
	pltff's motion for free transcript filed. (36)

D. C. 109

CLOSED

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ ★
MAR 4 1977
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

BISWANATH HALDER,

Plaintiff,

- against -

ITT CORPORATION,

Defendant.

----------x

JUDGMENT

74 C 1532

N'FILMED

This action having come on for trial before the Court, Honorable Jacob Mishler, United States District Judge, presiding, and the plaintiff having informed the Court that he was not ready for trial and the Court having ordered the trial to begin without a jury and at the conclusion of the trial, the Court, entering findings of fact and conclusions of law on the record, and directing the Clerk to enter judgment in favor of the defendant and against the plaintiff dismissing the complaint together with costs when taxed, it is

ORDERED and ADJUDGED that plaintiff take nothing of the defendant and that the complaint is dismissed together with costs when taxed.

Dated: Brooklyn, New York
March 4, 1977

Lewis Orgel
Clerk

Received copy
June 15, 1977
Rankin Witzel & Jaffe